

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

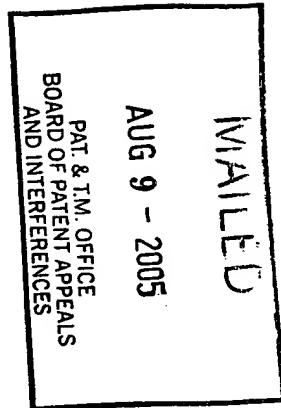
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN G. POSA and
BARRY H. SCHWAB

Appeal No. 2005-2039
Application 09/625,531¹

ON BRIEF



Before LEE, TORCZON and MEDLEY, Administrative Patent Judges.

LEE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's rejection of applicants' claims 8-17. No claim has been allowed.

References relied on by the Examiner

David et al. ("David")	6,069,943	May 30, 2000
Chang et al. ("Chang")	6,469,732	Oct. 22, 2002

The Rejections on Appeal

Claims 8-17 stand rejected under 35 U.S.C. § 103 as unpatentable over David and Chang.

For purposes of this appeal, the applicants have grouped claims 8 and 13 together, and claims

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Application for patent filed July 26, 2000. The real party in interest is Videia, LLC.

9-12 and 14-17 together. The applicants indicate that claims 8 and 13 stand or fall as one, and claims 10-12 and 14-17 stand or fall with claim 9. (Brief at p.3) Claim 9 depends directly from claim 8.

The Invention

The invention is directed to a telecommunications apparatus having a base unit which forms a part of a video teleconferencing system including a video camera for capturing images of a user of the apparatus for transmission to a listener through the base unit. The base unit includes an interface to a telecommunications network, and there is at least one wireless remote microphone in communication with the base unit to enable the user to speak to the listener through the base unit and the telecommunications network. Claim 8 is the only independent claim and reads as follows:

8. Telecommunication apparatus, comprising:

a base unit, including an interface to a telecommunications network;

at least one wireless remote microphone in wireless communication with the base unit, enabling a user of the microphone to speak to a listener through the base unit and telecommunications network; and

wherein the base unit forms part of a video teleconferencing system including a video camera for capturing images of the user for transmission to the listener through the telecommunications network.

The Prior Art References

David discloses a collaborative conferencing circuit which makes use of two telephone lines to enable a first teleconference call to be connected via one line while a collaborative call is

made to another person on the second line and while a monitoring function can be maintained on the first telephone conference call. (Column 2, lines 1-5). “[A] user will be able to collaborate with a fellow conferee or third party (hereinafter referred to as a ‘collaborator’), while keeping track of the proceedings of the teleconference.” (Column 2, lines 7-10). After initiating the collaborative call, the user may monitor the first conference call in receive only mode, such as on the speaker phone, while using a separate handset or headset to conduct a side conversation with the collaborator. (Column 3, lines 50-54). “Once the collaborative call is established, the user’s audio transmit path may be toggled between the two calls. At all times, the non-active line has its transmit path muted to ensure the privacy of the collaborative call.” (Column 2, lines 47-50). In column 7, lines 53-55, David describes that its handset device 82 can be a mobile cordless handset that transmits and receives radio signals from telephone set 80. (See Figure 6).

Chang discloses a method and system in a videoconferencing system for determining the acoustic source location of a speaker using a microphone array including as few as four microphones in a 3-dimensional configuration. (Abstract). Once the acoustic source location of the speaker is determined, the camera can be automatically controlled to turn towards the speaker using the determined acoustic source location. (Column 2, lines 25-39).

Discussion

These findings of the examiner are not in dispute: (1) that David teaches a base unit 80 including an interface to a telecommunications network; and (2) that David teaches at least one wireless remote microphone in wireless communications with the base unit 80 enabling the user

to speak to a listener through the base unit and the telecommunications network. (Answer at p.3). What David does not disclose, as is expressly acknowledged by the examiner (Answer at p.3), is that the base unit forms a part of a videoconferencing system including a video camera for capturing images of the user for transmission to the listener through the telecommunications network. In that connection, the examiner states (Answer at 3):

However, Chang teaches a system where video conferencing provides accurate determination of the position of the speaking participants (see abstract). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to include Chang's well known video conferencing system with David's already existing remote microphone communication system in order to provide David with video means as well as a camera that is capable of automatically steering itself to the user.

The applicants argue (1) that the goal and point of novelty of David concerns audio switching and "**has nothing to do with video**" (emphasis by applicants) (Brief at p.4), and (2) that although Chang discloses video and position determination, "**hardwired microphones are clearly used**" (emphasis by applicants) (Brief at p.4).

The first argument is without merit. It is because David discloses nothing about using a camera and transmitting video images of either the conference call participant or the collaborative call participant that the examiner relied, instead, on Chang for the teaching about video conferencing. The fact that David's system does not include video communication does not mean that the audio conferencing system of David is incompatible with implementation or addition of video signal communication if the teaching or suggestion for video signal

communication along side or together with audio signal communication in a teleconference is revealed in a prior art reference such as Chang.

As for the second argument, we take the applicants' position to be that Chang's system for determining the position of the conference participant depends on use of at least four "hard-wired" microphones whose positions relative to each other and to the camera are fixed and predetermined. That characterization of Chang is correct (Chang, column 2, lines 26-29 and column 4, lines 3-19). Chang makes use of the time delay of received acoustic signals at the four microphones whose positions are predetermined to derive the distance of the speaker from each fixed microphone. (Chang, column 4, lines 36-39). A position determining module, based on the time delay estimation and the predetermined configuration, provides possible positions of the sound source and selects from the possible positions a final position for use by a camera control system to direct the camera. (Chang, column 4, lines 33-39). In David, the collaborative call is made by using only a single wireless microphone, either in a wireless handset or a wireless headset. (David, column 4, lines 45-48). In either case, the microphone would be located on the speaker's person who is free to move about as he or she desires. Thus, the wireless microphone of David has no fixed location to assist in determining the speaker's location by any scheme involving time delay of received signals. Chang's position determining scheme would not work if it were applied to David's one wireless microphone the same way it is applied to Chang's four "hard-wired" microphones whose locations are predetermined and fixed.

The examiner's rejection is not well written. It is too general where specific findings and explanations are necessary. What does it mean to say simply that it would have been obvious to include Chang's well known video conferencing system in David's already existing remote microphone communication system? The devil is in the details. Just how does the examiner propose to include Chang's system in David's? Without something more specific from the examiner, it is reasonable for the applicants to assume that what the examiner means is to make happen with David's wireless microphone what Chang discloses happens with its wired microphones. And that, as explained above and as argued by applicants, cannot be done.

It is possible that the examiner meant something else. But a position unsaid is as good as no position. The applicants cannot be expected to guess at just what the examiner had in mind. If the examiner did not mean that what Chang says about its microphones can be applied to David's wireless microphone, but that Chang and David may be combined by allowing the user in David to continue using the wireless handset or headset for transmitting audio signals, and by adding four "hard-wired" microphones with predetermined locations to determine the user's location for use by a camera, that position and rationale have to be specifically articulated. The applicants are entitled to a fair opportunity to respond to that position and rationale. Of course, the examiner would have to explain why it would have been obvious to one with ordinary skill in the art to continue to use David's wireless microphone in conjunction with four additional "hard-wired" microphones, and the applicants might argue that if the user is speaking into a wireless handset or headset on his person, the volume of his voice would be too low for use in connection

with four “hard-wired” microphones as taught by Chang. But all these matters are neither here or there. It is a matter for another day, if and when the examiner, upon return of the application to his jurisdiction, particularly articulates a rationale that is consistent with the references that he cites. Until then, the matter has not been briefed and is not now before us.

In response to the applicants’ arguments, the examiner explains that both Chang and David have to do with teleconferencing and that providing video capabilities during a conference call is notoriously well known as is evidenced by Chang. The examiner states: “It would be completely obvious to take certain features from Chang’s invention and utilize them in David’s and vice versa” (Answer at p.6). Again, the devil is in the details. The examiner does not specify what or which feature from Chang and how it would be incorporated in David. The same is true with the examiner’s statement “[i]t is notoriously well known in the art to modify wired system’s to be in a wireless environment. Furthermore, it is notoriously well known in the art to have video transmitted wirelessly” (Answer at pp. 6-7). Just exactly what is to be modified, and how? Rejections based on such generalities are insufficient where more details are needed, as here. Although the statement that it is well known to have video signals transmitted wirelessly is quite specific, it does not fit any stated rationale for the rejection. Applicants’ claim 8 does not require any video signal to be transmitted wirelessly. Where the examiner is specific, the statement is without focus and not tied in with the rationale on which the rejection is based.

In short, as explained above, there is excessive “hand waving” by the examiner that is either not sufficiently specific where specifics are needed or simply not pertinent where it is specific. The explanations by the examiner are unfocused and side-steps many key issues.

In the last three lines of the examiner’s answer, which appear on page 7, it is stated:

It should be noted, that with respect to claim 8, Chang alone teaches all the limitations with the exception that the system [is] a wireless system. It is examiner’s contention that there isn’t anything novel about making a system wireless.

If by the foregoing the examiner is attempting to advance another rationale for the rejection, i.e., that it would have been obvious for one with ordinary skill in the art to make Chang’s “hard-wired” microphones wireless, one which is far different from that previously urged throughout the examiner’s answer, the attempt has failed because it is incomplete. Even assuming that there indeed is nothing novel about making a system wireless, that is not the same as concluding that it would have been obvious for one with ordinary skill in the art to change Chang’s “hard-wired” microphones to wireless microphones. The examiner cannot rely on the applicants or the Board to read between the lines actually written by the examiner and fill in gaps. The examiner’s job is a hard one. A good rejection should clearly state just what the examiner means, no more and certainly also no less. For instance, the examiner must state that it would have been obvious to one with ordinary skill in the art to replace Chang’s four hard-wired microphones with four wireless microphones, if that is the examiner’s position.

In any event, assuming that the examiner's new rationale is complete, burying a new rationale in the last three lines of the examiner's answer, after full discussions on other grounds sandbags the applicants and deprives the applicants of a fair opportunity to respond.

Upon return of the application to the examiner, the examiner is free to reconsider Chang and David and to assert any rejection based on the two references as he or she sees fit, including one relying on the replacement of Chang's hard-wired microphones with wireless microphones, albeit any such new rejection should clearly articulate the underlying rationale, and provide sufficient details about how the teachings are combined to arrive at the claimed invention. Moreover, in that connection, it is important to note that claim 8 does not require the camera to be steerable to follow the movements of the user who is communicating through the wireless remote microphone. Nor does it require that images of the user be captured for the entire time the user is using the wireless remote microphone to communicate voice. It is unnecessary for the examiner to try to meet a limitation that is not claimed. The examiner should consider whether it would have been obvious to one with ordinary skill in the art to simply put a fixed camera on David's telephone set 80 to capture images of the user talking on the wireless microphone. The applicants, on the other hand, would be free to argue that there is no guarantee that such a camera would capture any video image of the user.

Claim 9 depends from claim 8 and reads as follows:

9. The telecommunication apparatus of claim 8, further including:
a wireless signal transmitter; and

wherein the remote microphone re-transmits the wireless signal to the base unit, enabling the base unit to determine a positional aspect of the user of the microphone.

Because claim 9 depends from claim 8, the rejection of claim 9 has the same deficiencies as those discussed above for claim 8. Furthermore, the examiner's reasoning of why Chang and David together meet the features of claim 9 is also deficient. The examiner states (Answer at pp. 3-4):

Chang's positioning aspects (col. 2, lines 1-14) are notoriously well known and therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include Chang's well known video conferencing system with David's already existing remote microphone communication system in order to provide David with a camera that is capable of automatically steering itself to the user.

Again, the devil is in the details. The examiner paints with a broad brush, which is inappropriate. The examiner acknowledges that David does not disclose a wireless signal transmitter, and yet does not articulate where in Chang is disclosure or suggestion for such a wireless signal transmitter whose signal is received and then re-transmitted by any microphone. Chang makes use of a different method for determining the location of the speaker, one which relies on arrival time delays of the speaker's voice at each of the four "hard-wired" microphones. It is entirely unclear just how the examiner has combined Chang and David to come up with the features recited specifically in claim 9. Evidently, using Chang's position determining scheme in David still would not generate an apparatus as the applicants have claimed in claim 9.

For the foregoing reasons, the rejection of claims 8-17 cannot be sustained.

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Conclusion

The rejection of claims 8-17 under 35 U.S.C. § 103 as unpatentable over David and Chang is reversed.

A reversal of the examiner's rejection should not be construed as an affirmative indication or holding that the applicants' claims are patentable over the prior art cited by the examiner, but only that the rationale as articulated by the examiner in support of the rejection is inadequate.

REVERSED

/ss/ Jameson Lee)	
JAMESON LEE)	
Administrative Patent Judge)	
)	
)	
)	
/ss/ Richard Torczon)	BOARD OF PATENT
RICHARD TORCZON)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
/ss/ Sally C. Medley)	
SALLY C. MEDLEY)	
Administrative Patent Judge)	

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